

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANTHONY COLLINS, §
§
Plaintiff, § CIVIL ACTION NO. H-05-2242
v. §
§
LT. MALONE, *et al.*, §
§
Defendants. §

ORDER OF DISMISSAL

Plaintiff Anthony Collins, a state inmate proceeding *pro se* and *in forma pauperis*, filed this lawsuit under 42 U.S.C. § 1983 complaining of violations of his civil rights. On August 9, 2005, the Court ordered plaintiff as follows:

The plaintiff will respond to the defendants' dispositive motion within thirty (30) days of the date in which the defendants mailed plaintiff his copy of the dispositive motion, as shown on the defendants' certificate of service. Failure of the plaintiff to respond to the defendants' motion within the time limit may result in dismissal of this action for want of prosecution under Rule 41(b), Federal Rules of Civil Procedure.

(Docket Entry No. 5, p. 2, original emphasis.) On October 9, 2006, defendants served plaintiff with a copy of defendants' motion for summary judgment. (Docket Entry No. 26.) To-date, and despite expiration of a reasonable period of time, plaintiff has failed to file a response to the motion for summary judgment as ordered by the Court.

The Court finds that plaintiff's failure to respond to the motion for summary judgment reflects his lack of due diligence in prosecuting his case. The Court further finds that

plaintiff has failed to comply with the Court's order to respond. *See Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (affirming dismissal for want of prosecution based on inmate's failure to respond to a summary judgment motion as ordered by the district court).

Accordingly, this case is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for want of prosecution and for plaintiff's failure to comply with this Court's order. Any and all pending motions are **DENIED AS MOOT**.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas, on this 20th day of November, 2006.


KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE